

## **CHAPTER 1.17**

### **Administrative Penalty Citations for Code Violations**

#### **1.17.010 General intent.**

A. The City Council finds that the enforcement of this Code is an important public service, and that code enforcement is vital to the protection of the public's health, safety and quality of life. The City Council further finds that a comprehensive code enforcement system that uses a combination of judicial and administrative remedies is critical to gain compliance with these ordinances.

B. This Chapter provides for administrative penalties that may be imposed for violation of certain sections of this Code. The Chapter specifically affected is Chapter 8.24 of this Code.

C. The purpose of this Chapter is to encourage prompt compliance with the Code and prompt payment of any penalties. (Ord. 567-13)

#### **1.17.020 Definitions.**

When used in this Chapter, the following words and terms, unless the context indicates a different meaning, shall be interpreted as follows:

*City* means the City of Evans.

*City Manager* means the City Manager or the City Manager's designee.

*Code* means those provisions of the Evans Municipal Code enumerated in Subsection 1.17.010.B.

*Enforcement Official* means an employee or agent of the City authorized to enforce the ordinances of the City.

*Hearing Officer* means the officer appointed by the City Manager to hear appeals under this Chapter.

*Responsible party* means a person or entity who has violated the Code or, in the case of property violations, the responsible party may also be the property owner, the occupant, or an individual or an entity who, acting as an agent for or in any other legal capacity on behalf of the owner, has authority over property subject to an administrative citation under this Chapter. (Ord. 567-13)

#### **1.17.030 Authority.**

A. Any responsible party violating provisions of the Code may be issued an administrative citation by an Enforcement Official as provided in this Chapter.

B. Notwithstanding any other provision of the Code, responsible parties cited under the provisions of this Chapter shall have only the appeal rights granted herein.

C. Each day a violation exists or continues shall constitute a separate and distinct violation for which a separate administrative citation may be issued. However, once an administrative citation has been issued for a violation of the Code, no additional administrative citation shall be issued for the same violation for seven (7) days or, if the responsible party requests an appeal in accordance with this Chapter, until after the appeal has been heard and the responsible party has not complied with an administrative enforcement order of the Hearing Officer within seven (7) days of its issuance or such other time as the Hearing Officer has specified.

D. A civil penalty assessed by means of an administrative citation may be collected by any means allowed by law.

E. Enforcement actions are intended to be cumulative in nature. The City may pursue one (1) or more civil, criminal and administrative actions, fees, fines, sentences, penalties, judgments and remedies and may do so simultaneously or in succession. The enactment of this administrative remedy shall in no way interfere with the City's right to prosecute violations as criminal offenses. (Ord. 567-13)

#### **1.17.040 Procedures for issuance of an administrative citation.**

A. Whenever the Enforcement Official determines that a violation of the Code exists, the Enforcement Official shall give a notice of violation and order to correct ("Notice of Violation") to the responsible party. The Notice of Violation shall be in writing and shall describe with reasonable detail the violation so that the responsible party may properly correct it. The Notice of Violation shall provide a reasonable time (typically seven [7] days) for correction given the circumstances of the violation, but in no case more than thirty (30) days.

B. The Notice of Violation shall be served as follows:

1. The Enforcement Official shall attempt to issue the Notice of Violation to the responsible party at the site of any violation. If the responsible party is not located, a copy of the Notice of Violation shall be left with any adult person residing or working at the site, or if no adult person is found at the site and the violation occurred on private property or on property for which the responsible party has responsibility, then a copy of the Notice of Violation shall be posted in a conspicuous place on the site and a copy mailed, first-class mail, postage prepaid, to the last known address of the responsible party.

2. If the Enforcement Official is unable to issue the Notice of Violation to the responsible party personally, then the Notice of Violation shall be sent via first-class mail to the responsible party. In the case of violations occurring on private property where the owner of such property is a responsible party, the Notice of Violation shall be sent to the address shown in the County Assessor records for the County. In the case of violations occurring on property for which the responsible party is not the owner, the Notice of Violation shall be sent to the most recent mailing address available to the City for that responsible party.

3. The Notice of Violation shall be deemed served on the date of receipt by the responsible party, if personally served, or upon the fifth day after mailing of the Notice of Violation. Notices posted in a conspicuous place on the site, in accordance with Paragraph 1. above shall be deemed personally served. Notices of violation for violations that pose a threat to public health and safety or to the environment, but cannot be personally served or posted in a conspicuous place on the property, shall be sent to the address shown in the County Assessor records and shall be deemed served on the date of postmark.

C. If, after service of the Notice of Violation, the Code violation is not timely corrected an Enforcement Official may issue an administrative citation to a responsible party.

D. Service of administrative citation on a responsible party shall be made in the same manner as the Notice of Violation as described in Subsection B. above, except that the Enforcement Official shall attempt to obtain the signature of the person receiving the administrative citation on the administrative citation. If that person refuses or fails to sign the administrative citation or is not available to sign, the failure or refusal to sign shall not affect the validity of the administrative citation and subsequent proceedings. The administrative citation shall be deemed served on the date of receipt by the responsible party, if personally served, or upon the fifth day after mailing of the administrative citation. Notices posted in a conspicuous place on the site, in accordance with Paragraph B.1. above, shall be deemed personally served. Administrative citations for violations that pose a threat to public health and safety or to the environment but cannot be personally served or posted in a conspicuous place on the property shall be sent to the address shown in the County Assessor records and shall be deemed served on the date of postmark. (Ord. 567-13)

#### **1.17.050 Voluntary compliance agreements.**

A. A voluntary compliance agreement may be entered into at any time after issuance of a notice of violation or a citation pursuant to this Chapter.

B. The voluntary compliance agreement is a commitment by the person responsible for code compliance under which the person agrees to do any combination of abating the violation, remediating the site or mitigating the impacts of the violation. The voluntary compliance agreement shall include the following:

1. Name and address of the party responsible for the violation;
  - a. Responsible party association with the property/violation;
2. Address or legal description of the location of the violation;
3. Description of the violation with reference to the applicable section of Code;
4. Description of necessary corrective action, includes:
  - a. Deadline of corrective action (the Enforcement Official may either require that compliance be achieved by a specific date or that compliance be achieved by a date to be determined based on the occurrence of some future event);
5. The subsequent action the Enforcement Official shall enact should voluntary compliance not be satisfied as stipulated in the agreement, unless superseded by state or federal law;
6. An acknowledgment that if the department determines that the terms of the voluntary compliance agreement are not met, the City may abate the violation in accordance with Section 1.16.050 of this Title;
7. An acknowledgment that if any assessed penalty, fee or cost is not paid, the City may charge the unpaid amount as a lien against the property where the nuisance code violation occurred if owned by the person responsible for code compliance;

8. An acknowledgment that by entering into the voluntary compliance agreement the person responsible for code compliance waives the right to administratively appeal, and thereby admits that the conditions described in the voluntary compliance agreement existed and constituted a civil code violation; and that if the department determines the terms of the voluntary compliance agreement are not met, the person is subject to and liable for any remedy authorized by this Section, which includes the assessment of the civil penalties identified in the voluntary compliance agreement, abatement of the violation, assessment of the costs incurred by the City to pursue code compliance and to abate the violation, including legal and incidental expenses, and the suspension, revocation or limitation of a development or building permit; and

9. An acknowledgment that the person responsible for code compliance understands that he or she has the right to be served with a citation, notice and order to correct or cease and desist order for any violation identified in the voluntary compliance agreement, has the right to administratively appeal any such citation, notice and order to correct or cease and desist order and that he or she is knowingly, voluntarily and intelligently waiving those rights.

C. Upon entering into a voluntary compliance agreement, a person responsible for code compliance waives the right to administratively appeal, and thereby admits that the conditions described in the voluntary compliance agreement existed and constituted a civil code violation; and agrees that if the department determines the terms of the voluntary compliance agreement are not met, he or she is liable for the civil penalty identified in the voluntary compliance agreement, is liable for the costs incurred by the City to pursue code compliance and to abate the violation, including legal and incidental expenses, and is subject to all other remedies provided for in this Section.

D. Voluntary compliance agreements shall extend the deadline for corrective action for a reasonable amount of time, but never more than thirty (30) days from the date of agreement.

1. Only one (1) extension of the time limit for compliance or a modification of the required corrective action may be granted by the department if the person responsible for code compliance has shown due diligence or substantial progress in correcting the violation but circumstances render full and timely compliance under the original conditions unattainable.

E. The voluntary compliance agreement is not a settlement agreement. (Ord. 567-13)

#### **1.17.060 Contents of administrative citation.**

A. The administrative citation shall state the date and location of the violations, and the approximate time the violations were observed. Where applicable, the administrative citation shall identify the property in violation by address or legal description.

B. The administrative citation shall state the Code sections violated and describe the violations.

C. The administrative citation shall describe the action required to correct the violations.

D. The administrative citation shall require the responsible party to correct the violations within a reasonable time given the circumstances, but in no case more than seven (7) days, and shall explain the consequences of failure to correct said violations.

E. The administrative citation shall state the amount of penalty imposed for the violations.

F. The administrative citation shall explain how the penalty shall be paid, the time period by which it shall be paid and the consequences of failure to pay the penalty.

G. The administrative citation shall identify the right and procedures for appealing the administrative citation.

H. The administrative citation shall contain the signature of the Enforcement Official and the signature of the responsible party if it can be obtained. (Ord. 567-13)

#### **1.17.070 Appeal of administrative citation.**

A. A person served with an administrative citation may file a notice of appeal in person or by mail postmarked no later than seven (7) calendar days from the service of the administrative citation. Compliance with this time limit shall be a jurisdictional prerequisite to any appeal brought under this Chapter. Failure to comply with such time limit shall be deemed to waive the right to a hearing and the adjudication of the issues related to the hearing, provided that proper notice of the administrative citation has been provided.

B. The notice of appeal shall be made in writing, filed with the City Clerk and contain the following information.

1. The reasons the appellant believes the administrative citation is objectionable, incorrect or illegal.
2. The amount and type of claim or dispute involved, and the time during which it accrued or occurred.
3. The name, address and telephone number of the appellant.
4. The signature of the appellant, legal representative and/or corporate agent.

C. A processing fee in the amount indicated on the administrative citation shall be paid by cash, check or certified funds simultaneously with the filing of the notice of appeal. The processing fee is not refundable except as provided in Subsection 1.17.080.L of this Chapter.

D. If, in the opinion of the City Clerk, the appeal meets all of the requirements of Sections A through C above, the City Clerk shall forward the notice of appeal to the designated Hearing Officer.

E. If, in the opinion of the City Clerk, the appeal does not meet all of the requirements of Subsections A through C above, the City Clerk shall promptly return the appeal and notify the appellant of what requirements the appeal fails to meet.

F. As soon as practicable after receiving the written notice of appeal, the designated Hearing Officer shall schedule a date, time and location for the hearing, unless, if requested by the appellant and in the sole discretion of the designated Hearing Officer it is submitted on written brief and supporting material.

G. Written notice of the date, time and location of the hearing shall be personally served upon or sent by first-class mail to the responsible party at least seven (7) calendar days prior to the date of the hearing. (Ord. 567-13)

#### **1.17.080 Procedures and standards at administrative citation appeal hearings.**

A. The procedure and format of the administrative citation appeal hearing shall follow procedures as set forth herein. Procedure: In addition to any procedural hearing requirements the Hearing Officer may adopt by rule, the Hearing Officer shall conduct hearings and make decisions in accordance with the following requirements:

1. The Hearing Officer may keep a record of the proceedings, either stenographically or by sound recording, and a transcript of the proceedings and copies of graphic or written material received in evidence shall be made available to any person upon request within sixty (60) days of the hearing and payment in advance of the estimated cost of production of the transcript.

2. The Hearing Officer shall render written decisions, accompanied by findings of fact and conclusions based thereon. Conclusions based on any provision of Chapter 8.24 of this Code shall contain a reference to such provision and shall also contain the reason the conclusion is deemed appropriate in light of the facts found.

3. All witnesses may be sworn or affirm their testimony.

B. Administrative citation appeal hearings are intended to be informal in nature. Formal rules of evidence and discovery do not apply; however, an informal exchange of discovery may be required by the Hearing Officer or requested by any party. The request must be in writing. Failure to request discovery shall not be a basis for a continuance.

C. The parties to an administrative citation appeal hearing shall be the responsible party and the City.

D. The City bears the burden of proof at an administrative citation appeal hearing to establish the existence of a violation of the Code.

E. The standard of proof to be used by the Hearing Officer in deciding the issues at an administrative citation appeal hearing is by a preponderance of the evidence. (Ord. 567-13)

#### **1.17.090 Duties and powers of Hearing Officer.**

A. The Hearing Officer shall determine whether appeals of administrative citations are valid. In doing so the Hearing Officer shall determine whether the administrative citation under appeal was issued in compliance with the requirements of the City ordinances. In each case the Hearing Officer shall be charged with performing all functions relating to the final factual determinations and procedural orders, and entertaining petitions or motions made in writing. The Hearing Officer may perform those duties and functions necessary and incidental to determining the matter, hearing all evidence and examining all documents.

B. In the discretion of the Hearing Officer, parties to the hearing may be required to file a pre-hearing statement before the case is set for hearing. The pre-hearing statement may include: the issues raised by the appeal; agreed and disputed facts; copies of exhibits not previously included in the record; names of witnesses with a brief statement summarizing their testimony; an estimate of the time necessary to present a party's evidence and other matters as requested by the Hearing Officer.

C. All hearings or, when an appeal is submitted for determination based on written argument and written facts and figures, all examination of such written petitions and papers shall be conducted by the Hearing Officer assigned to conduct the hearing or to examine the written material submitted.

D. The admissibility of evidence shall be encouraged and the Hearing Officer shall consider all evidence of probative value. The Hearing Officer may utilize his or her experience, technical competence and specialized knowledge in the evaluation of evidence presented.

E. Copies, photographs and photocopies may be admitted into evidence or substituted in evidence in place of original documents.

F. Witnesses intended to give opinion testimony as experts must be qualified as such, and their qualifications should be submitted in advance to the Hearing Officer.

G. Whenever it appears that an appeal is not properly before the Hearing Officer, or that the appellant for some other reason lacks jurisdiction or standing, the case may be dismissed on the motion of any party or the Hearing Officer.

H. Mailings, notices, computations of time, time limitations, service and filings shall conform to the requirements of particular law or ordinance involved.

I. The written decision of the Hearing Officer shall be known as an administrative enforcement order.

J. The parties may enter into a stipulated agreement which must be signed by both parties. Upon approval and acceptance by the Hearing Officer, this agreement shall be entered as the administrative enforcement order. Entry of this agreement shall constitute a waiver of the right to a hearing and the right to appeal.

K. The Hearing Officer may uphold the administrative citation and all penalties, or dismiss the administrative citation and all penalties, or may conditionally reduce the penalties assessed by the administrative citation. The Hearing Officer may also impose conditions and deadlines to correct the violation or require payment of any outstanding penalties.

L. If the Hearing Officer dismisses the administrative citation and all penalties due to the City's failure to satisfy its obligations under this Chapter, the appellant's thirty-five-dollar processing fee shall be promptly refunded.

M. The Hearing Officer has continuing jurisdiction over the subject matter of an administrative citation appeal hearing for the purposes of granting a continuance, ordering compliance by issuing an administrative enforcement order, ensuring compliance of that order, modifying an administrative enforcement order, or, where extraordinary circumstances exist, granting a new hearing. The Hearing Officer may schedule subsequent review hearings as may be necessary or as requested by a party to the hearing to ensure compliance with the administrative enforcement order. (Ord. 567-13)

#### **1.17.100 False information or refusal prohibited.**

It shall be unlawful for any person to willfully make a false statement or refuse to give his or her name or address with intent to deceive or interfere with the Enforcement Official when in the performance of official duties under the provisions of this Chapter. Any person who willfully makes a false statement or refuses to give his or her name or address with intent to deceive or interfere with the

Enforcement Official shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine or by confinement in jail or by both such fine and imprisonment as specified in Chapter 1.16 of this Title. (Ord. 567-13)

**1.17.110 Failure to attend administrative citation appeal hearing.**

Any responsible party who fails to appear at the hearing is deemed to waive the right to a hearing and the adjudication of the issues related to the hearing, provided that proper notice of the hearing has been provided as required herein. (Ord. 567-13)

**1.17.120 Failure to comply with administrative enforcement order.**

It is unlawful for a responsible party to an administrative enforcement hearing who has been served with a copy of the final administrative enforcement order to fail to comply with the order. Any person who fails to comply with a final administrative enforcement order shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine or by confinement in jail or by both such fine and imprisonment as specified in Chapter 1.16 of this Title. Prosecution for failure to comply with a final administrative enforcement order shall not commence until the time to appeal such order has lapsed. (Ord. 567-13)

**1.17.130 Penalties assessed.**

A. If the responsible party fails to correct the violation within the time required as indicated on the notice of violation, or if an additional violation of Chapter 8.24 of this Code is observed within six (6) months of the notice of violation, an administrative citation may be issued to the responsible party indicating a fine of one hundred fifty dollars (\$150.00).

B. If the responsible party fails to correct the violation within the time required as indicated on the administrative citation, or if another violation of Chapter 8.24 of this Code is observed within six (6) months of the date of the first administrative citation, a second administrative citation may be issued to the responsible party indicating a fine of five hundred dollars (\$500.00).

C. If the responsible party fails to correct the violation within the time required as indicated on the administrative citation, or if another violation of Chapter 8.24 of this Code is observed within six (6) months of the date of the second or subsequent administrative citation, a third or subsequent administrative citation may be issued to the responsible party indicating a fine of nine hundred ninety-nine dollars (\$999.00).

D. Payment of the penalty shall not excuse the failure to correct the violations nor shall it bar further enforcement action by the City. (Ord. 582-13 §1; Ord. 567-13)

**1.17.140 Failure to pay penalties.**

A. All penalties assessed shall be payable to the City. Payment of the full amount of the penalty must be received in person or by mail postmarked no later than thirty (30) calendar days from the date of issuance of the administrative citation or administrative enforcement order, or within the time specified on the administrative enforcement order.

B. Any such penalty that is not paid within thirty (30) days shall cause such penalty to become a lien against such property, to have priority over all liens, except general taxes and prior special assessments, to be placed upon the tax list for the current year, and to be collected in the same manner as



other taxes are collected, together with a fifteen-percent penalty to defray the cost of collection, as provided by the laws of the State.

C. The failure of any responsible party to pay the civil penalties assessed by an administrative citation or administrative enforcement order within the time specified on the citation or order, respectively, may result in the imposition of a late fee of twenty-five dollars (\$25.00) and interest at a rate of ten percent (10%) per annum.

D. Any action or other process provided by law may be maintained by the City to recover or collect any amounts, including late fees, penalties, interest and administrative costs, owing under this Chapter, including but not limited to referral of this matter to the Municipal Court by service of a summons and complaint, in which case, notwithstanding the previously imposed penalties, the responsible party shall be subject to the penalties set forth in Chapter 1.16 of this Title. The City Manager may also refer the matter for collection by whatever means are available to the City. (Ord. 582-13 §1; Ord. 567-13)